

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
Tampa Division**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

SAMI AMIN AL-ARIAN, *et al.*,

Defendants.

**SAMI AL-ARIAN'S MOTION & MEMORANDUM TO DISMISS COUNTS 1
THROUGH 4 OF THE SUPERCEDING INDICTMENT FOR VIOLATION OF 18
U.S.C. SECTION 1385 (THE POSSE COMITATUS ACT)**

COMES now the Accused Dr. Sami Al-Arian and moves this Honorable Court for the entry of an Order dismissing counts (1) through (4) of the currently pending indictment. As grounds for the foregoing, the Accused avers that the government has violated 18 U.S.C. Section 1385, use of the Army and Air Force as a posse comitatus.

MEMORANDUM

The Posse Comitatus Act provides as follows:

Section: 1385. Use of Army and Air Force as posse comitatus:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

HISTORY:

(Added Aug. 10, 1956, ch 1041, § 18(a), 70A Stat. 626; June 25, 1959, P.L. 86-70, § 17(d), 73 Stat. 144.)

(As amended Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(L), 108 Stat. 2147.)

In the instant case the government has utilized military personnel to translate conversations from the wiretaps. A sample of those translations are included in Exhibits (1) through (4) located in the so called Tech Cut Summaries.

It appears from the exhibits that a C.W.O. Bassili and a Master Sergeant, whose name is blacked out, translated these exhibits. Additional exhibits marked 5,6,7,8, & 9 indicate that an unnamed Master Sergeant translated other conversations, which he determined did not involve relevant conversations. The appearance of the abbreviations C.W.O. and MSGT indicate that these translations were done by members of the military. C.W.O. indicates ‘chief warrant officer’, and MSGT indicates ‘master sergeant’. It appears that neither of these individuals are members of the Navy, noting that the Navy is exempt from the Posse Comitatus Act.

The Defense has not completed its review of all the Tech Cut summaries. However, the defense believes that the exhibits attached reveal the involvement of the military in the enforcement of civilian law.

The wiretaps and their translations, including these Tech Cuts Summaries lead to the searches of Dr. Al-Arian’s home and office and provided evidence by which the grand jury indicted him. It is clear from the attached Tech Cuts that military personnel have been utilized in this case in the enforcement of civil law.

WHEREFORE, the Accused, by and through undersigned counsel,
prays the Motion be granted and that the Court dismiss Counts (1) through
(4) of the indictment.

Dated: 29 October 2004

Respectfully submitted,

/s/ Linda Moreno
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th October, 2004, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno
Linda Moreno
Attorney for Sami Al-Arian